

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 456 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA**

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- Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
- 2 To be referred to the Reporter or
not ?
- 3 Whether their Lordships wish to see
the fair copy of the judgment ?
- Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to
the civil judge ?
- =====

ISHAQMOHAMMED IBRAHIM CHANAWALA**Versus****VOHRA AMINABEN ISAPBHAI & ANR****Appearance :**

MR SK BUKHARI for Applicant

MR KIRTIDEV R DAVE for Respondent No.1

MR KC SHAH APP for Respondent No.2

CORAM : HONOURABLE MR.JUSTICE J.R.VORA**Date : 18/01/2006**

ORAL JUDGMENT

1. Heard learned advocate Mr.S.K.Bukhari for the applicant, learned advocate Mr.K.R.Dave for the respondent No.1 and learned APP Mr.K.C.Shah for the respondent No.2 – State of Gujarat.
2. Having heard learned advocates and having gone through the record, it is clear that the present applicant has filed this Criminal Revision Application against an order passed by the learned Additional Sessions Judge, at Bharuch on 31st December, 2002 in Criminal Revision Application No.86 of 2002. The said Criminal Revision Application No.86 of 2002 came to be filed by the present respondent No.1 against an order passed by the Sub-Divisional Magistrate, Bharuch on 30th August, 2002 deciding an issue under Section 133 of Code of Criminal Procedure that the application of present respondent No.1 for closure of kiln for roasting peanuts, was rejected.
3. Learned Sub-Divisional Magistrate in his

judgment discussed the issue in detail and decided the matter, accordingly. While learned Sessions Judge did not enter into arena as to whether decision of Sub-Divisional Magistrate on facts upon each issue can be interfered with within the revisional jurisdiction under Sections 397, 398 and 399 of Code of Criminal Procedure, instead Criminal Revision Application was decided on the ground that the learned Sub-Divisional Magistrate did not follow the provisions of Sections 137 and 138 and Sections 139 to 143 of Code of Criminal Procedure.

4. Therefore, it would be in the interest of justice to quash the order impugned in this Criminal Revision Application and remand the matter to the Court of Sessions Judge, Bharuch for fresh adjudication of Criminal Revision Application No.86 of 2002 according to law, because learned Sub-Divisional Magistrate has reached certain conclusions and whether those

conclusions are tenable or not under the revisional jurisdiction would be the issues to be decided in said Criminal Revision Application No.86 of 2002.

5. In above view of the matter, this Criminal Revision Application is allowed to the extent that the order impugned in this Criminal Revision Application is quashed and set aside and it is directed that the Criminal Revision Application No.86 of 2002 to be decided by the learned Sessions Court of Bharuch, afresh, after hearing all parties concerned fully and taking into consideration oral as well as documentary evidence which might have been produced in the nuisance case. It is further directed that the said Criminal Revision Application No.86 of 2002 be decided, as early as possible preferably within three months from the date of receipt of the writ of this Court. The respondent No.1 herein will be at liberty to move learned Sessions Court at Bharuch to

hear Gujarat Pollution Control Board, if necessary. If such request is made, the learned Sessions Judge shall decide the same, according to law. Rule is made absolute to the above extent. Direct service is permitted.

[J. R. VORA, J.]

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